

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division
Honolulu, Hawai'i 96813

February 10, 2006

Board of Land and Natural Resources
State of Hawai'i
Honolulu Hawai'i

PSF No.: 00HD624

HAWAII

**Amend Prior Board Actions of September 22, 2000, D-9, Grant of
Perpetual, Non-Exclusive Easement to Verizon Hawaii Inc., for Utility
Purposes at Pu'uanahulu to Keahole, North Kona, Hawaii, Tax Map
Keys: 3rd/ 7-1-02:01; 7-1-03:01; 7-2-04:04; 7-2-05:08; and 7-3-10:33**

At its meeting of September 22, 2000, the Board of Land and Natural Resources, under Agenda Item D-9, approved the Grant of Perpetual, Non-Exclusive Utility Easement and Construction Right-of-Entry to Verizon Hawaii Inc. (formerly known as GTE Hawaiian Telephone Company) for utility purposes at Pu'uanahulu to Keahole, North Kona, Hawai'i. Tax Map Key: 3rd/ 7-1-02:01; 7-1-03:01; 7-2-04:04; 7-2-05:08; and 7-3-10:33. (**Exhibit A**)

The appraisal review report, which established the value of the subject easement at \$470,000, was prepared by Premiere Valuation and approved by the Chairperson of the Board of Land and Natural Resources. On May 22, 2003, Verizon acknowledged its receipt of our offer letter that requested remittance of a check for the easement consideration amount and document fees for further processing. Verizon expressed its disagreement with the valuation for the easement and indicated it would challenge the appraised value through its consultant. In part, Verizon's disagreement on the valuation is due to the great difference in consideration amounts between Verizon's (\$470,000) as compared to that quoted HELCO (\$100) in 1975.


On June 19, 2003, Sandy Padaken, Easement Coordinator/Consultant, on behalf of Verizon, requested to amend its prior request as approved under Item D-9, at the Land Board meeting of September 22, 2000. Verizon finds it necessary to make multiple changes to the original size and location of the easements associated with the referenced project. The existing Hawaii Electric Light Company (HELCO) easements were for 100 feet width and sized to accommodate its 69kv pole lines as well as future pole lines. Verizon requires co-location of its transmission lines onto the existing HELCO pole lines, however, instead of requiring a 100-foot wide easement as HELCO, Verizon now requests an easement of only twenty feet width over the revised alignment described.

Tax Map Keys:	Location	Helco Easement No.	Area (Acres)	Corresponding Verizon (revised) Easement No.	Area (Acres)
(3) 7-1-02:01	Pu'uwa'awa'a	10	66.4033	A	8.7494
(3) 7-1-03:01	Pu'uana'hulu	10	87.8097	A	11.5696
(3) 7-2-04:04	Kukio 2 nd Maniniowali Awake'e	13	20.377	B	4.075
(3) 7-2-05:08	Kahaiula Kaulana Awalua Ohiki Pu'ukala	15	22.055	C	4.401
(3) 7-3-10:33	Makaula Haleohiu Hamanamana Kalaoa 1 st - 4 th	17	11.386	D	2.277

RECOMMENDATION:

- A. That the Board Amend its Prior Board Actions of September 22, 2000, Item D-9, Grant of a Perpetual, Non-Exclusive Utility Easement and Construction Right-of-Entry to Verizon Hawaii Inc. (now known as Hawaiian Telcom, Inc.), for utility purposes at Pu'uana'hulu to Keahole, North Kona, Hawai'i. Tax Map Key: 3rd / 7-1-02:01; 7-1-03:01; 7-2-04:04; 7-2-05:08; and 7-3-10:33, to include:
1. Deletion of all references for a 100-foot wide easement, labeled as easements 10, 13, 15 & 17;
 2. Inserting revised references of a twenty (20) foot wide easement, now labeled as Easements A, B, C & D, corresponding to HELCO easement alignments as described above;
- B. Such other terms and conditions as may be imposed by the Chairperson to best protect the interest of the State.

Respectfully Submitted,


Wesley T. Matsunaga
Land Agent

APPROVED FOR SUBMITTAL:


PETER T. YOUNG, Chairperson

D-9

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division
Honolulu, Hawai'i 96813

September 22, 2000

Board of Land and Natural Resources
State of Hawai'i
Honolulu Hawai'i

HAWAII

**Grant of Perpetual, Non-Exclusive Easement and Issuance of
Construction Right-of Entry to GTE Hawaiian Telephone Company
for Utility Purposes at Pu'uana'hulu to Keahole, North Kona, Hawai'i.
Tax Map Keys: 3rd/ 7-1-02:01; 7-1-03:01; 7-2-04:04; 7-2-05:08; and 7-
3-10:33.**

APPLICANT:

GTE Hawaiian Telephone Company Incorporated (GTE)

APPROVED BY THE BOARD OF
LAND AND NATURAL RESOURCES
AT ITS MEETING HELD ON

9/22/00

LEGAL REFERENCE:

Sections 171-13 and 171-95, Hawai'i Revised Statutes, as amended.

LOCATION/ ZONING/ ENCUMBRANCES/ AREA:

Portion of Government lands situated at Pu'uana'hulu, Pu'uwa'awa'a, Kukio 2nd, Maniniowali, Wawake'e, Mahaiula, Kaulana, Awalua Ohiki, Pu'ukala, Makaula, Haleohiu, Hamanamana, and Kalaoa 1st-4th, District of North Kona, Island of Hawai'i, identified as Tax Map Keys: 3rd/ 7-1-03:01; 7-1-02:01; 7-2-04:04; 7-2-05:08; and 7-3-10:33, as shown on attached maps labeled as Exhibits A. Subject parcels are within the Conservation District, General Subzone and currently encumbered as shown below:

Tax Map Key	Location	Encumbrances/ Size (acres)	Easement No.	Easement Area
(3) 7-1-02:01	Pu'uwa'awa'a	DOFAW-Pu'uana'hulu GMA/ 15,848.328	10	Centerline easement, 100 feet wide, exact area to be determined
) 7-1-03:01	Pu'uana'hulu	DOFAW-Pu'uana'hulu GMA / 20,950.131 LOD-28002: HELCO/ 1.224	10	Centerline easement, 100 feet wide, exact

EXHIBIT A

ITEM D-9

				area to be determined
(3) 7-2-04:04	Kukio 2nd, Maniniowali, Awake'e	RPS-7193: WB Kukio Resorts/ 2,419.454 Set Aside to West Hawai'i Veterans Cemetery / 61.887 Grant of Easement to WB Kukio Resorts/ 29.96	13	Centerline easement, 100 feet wide, 20.38 acres, more or less.
(3) 7-2-05:08	Mahaiula, Kaulana, Awalua Ohiki, Pu'ukala	Vacant/ 2,158.000	15	Centerline easement, 100 feet wide, 22 acres, more or less.
(3) 7-3-10:33	Makaula, Haleohiu, Hamanamana Kalaoa 1 st to 4 th	LOD-28,162: HELCO/ 65.217 RPS-6539: Big Island Broadcasting/4.000 RPS-5176: UH Tropical Ag/ .016 RPS-7139: Big Island Radio/ .092	17	Centerline easement, 100 feet wide, 11.386 acres, more or less.
	Kalaoa 1 st -4 th		New	Centerline easement, proposed width 50', exact area to be determined.

LAND TITLE STATUS:

Section 5(b) lands, Hawai'i Admission Act

DHHL 30% entitlement lands pursuant to the Hawai'i State Constitution

YES _____ NO X

CHARACTER OF USE:

For overhead telephone lines:

Right, privilege and authority to construct, install, use, maintain, repair, replace and remove overhead telecommunication distribution lines, poles, guy wires and anchors over and across State owned land.

CONSIDERATION:

One time payment to be determined by independent or staff appraiser, it subject to review and approval by the Chairperson.

EXHIBIT A

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT

Not applicable, exempt under Hawai'i Administrative Rules, 11-200-8 (3D) & (6), Structures, Accessory.

DCCA VERIFICATION:

Place of business registration confirmed:	YES <u>X</u>
Registration business name confirmed:	YES <u>X</u>
Applicant in good standing confirmed:	YES <u>X</u>

APPLICANT REQUIREMENTS:

Applicant shall be required to:

1. Pay for appraisal to determine the one-time payment;
2. ~~Provide survey maps and descriptions according to State Standards and at Applicant's own cost.~~

REMARKS:

By letter dated March 7, 2000, GTE requested a perpetual, non-exclusive utility easement and construction right-of-entry onto State lands for purposes of attaching its fiber optic cable onto an existing HELCO 69 kilo volt power transmission pole line from Pu'uana'hulu to Keahole. Completion of the project will enable GTE to establish a fiber optic cable connection between their existing landline facilities at Kawaihae, Waikoloa, Waimea, and Kailua-Kona, as part of its on-going cross-island project. (Exhibit B)

On November 15, 1974, Item H-13, the Board of Land and Natural Resources, approved Conservation District Use Application #HA-5/31/74-609 and on June 27, 1975, Item F-9, the Board approved the perpetual, non-exclusive easements to HELCO.

By letter dated February 17, 1999, HELCO acknowledges receipt of GTE's proposal to purchase joint pole shares, contingent upon GTE meeting the standard conditions as imposed by HELCO, prior to the installation of GTE's fiber optic telecommunication system. (Exhibit C)

At its meeting of March 10, 2000, the Board of Land and Natural Resources, under agenda Item D-16, Set Aside approximately 61.887 acres to the County of Hawai'i for the West Hawai'i Veteran's Cemetery at Kukio-Makalawena, North Kona, Hawai'i, TMK: (3) 7-2-04:portion 04.

A Grant of Perpetual, Non-Exclusive Easement, consisting of approximately 65.217 acres, was recorded on July 17, 1996, under Land Office Deed No. 28,162 to the Hawai'i Electric Light Company Incorporated, TMK: (3) 7-3-10: portion 33.

At its meeting of October 22, 1999, the Board of Land and Natural Resources, under Agenda Item D-11, approved a Revocable Permit to WB Kukio Resorts, LLC for pasture purposes. Subject property consists of 2,572.504 acres, identified as TMK: (3) 7-2-04:04.

EXHIBIT A

Various governmental agencies were solicited for comments concerning the project and regarding GTE's request for an exemption from requirements for the preparation of an Environmental Assessment (EA). The various agencies contacted were:

Name of Agency	Comments
DLNR-Land Division	No objections; Qualifies as an Exempt Class of Action under HAR, 11-200-8 (6), however, require site plan, pursuant to HAR, 13-5-23 (L-7) Structures Accessory, (B-1) 13-5-38 Site Plan Approval.
DLNR-Division of Forestry and Wildlife	No objections, however, expressed concerns about the mauka-makai trails in the area and request a fire contingency plan. GTE's proposed mitigation measures on potential impacts on cultural and archaeological sites accepted.
DLNR-Division of State Parks	No comments/ objections.
DLNR-Historic Preservation	No objections; Expressed concerns regarding cultural resources and archaeological sites. Proposed mitigation measures accepted.
Department of Transportation-Highways	No comments/ objections.
County-Planning Department	No objections, not in Special Management Area or under their jurisdiction. Recommends a fire contingency plan.
County-Public Works	Require GTE install the cable at least 30 feet over the existing access road to the County of Hawaii's Pu'uana'hulu Municipal Solid Waste Landfill.
County-Department of Water Supply	No objections; Proposed project is not applicable to facilities.
Department of Hawaiian Home Lands	No comments/ objections. Project not applicable to their property
Office of Hawaiian Affairs	Expressed concerns regarding cultural resources, traditional/ customary Hawaiian rights, and flora/ fauna habitats. Attaching fiber optic cables to existing poles will have no impact. If intermediary poles are necessary, proposed sites to be surveyed by an Archaeologist and Botanist.
Hawai'i Electric Light Company, Inc	No objections; their response set forth issues that relate to use and purchase of the equipment as well as the easement corridor.

Staff has no objection to the project and to its request for exemption from requirements in preparing an EA since this project qualifies as an exempt class of action under Hawai'i Administrative Rules, 11-200-8 (3-D), "Construction and location of single, new, small facilities or structures", "the installation of new, small, equipment and facilities and the alteration and modification of same, including, but not limited to water, sewage, electrical, gas, telephone, and other essential public utility services extensions to serve the structures

or facilities; accessory or appurtenant structures, including garages, carports, patios, swimming pools, and fences; and, acquisition of utility easements; and (HAR) 11-200-8 (6), which states, "Construction or placement of minor structures accessory to existing facilities", will not require an EA for the Conservation District lands.

RECOMMENDATION:

- A. That the Board, subject to GTE fulfilling all of the Applicant requirements listed above, authorize the issuance of a perpetual, non-exclusive easement to GTE covering the subject area for utility purposes. Under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:
1. All improvements shall be done by GTE at no cost or expense to the State of Hawai'i or the County of Hawai'i;
 2. GTE, its successors, permitted assigns or permitted devisees, shall maintain and ~~repair structures and improvements constructed and/or erected thereon~~ at no cost to the State of Hawai'i or the County of Hawai'i, including periods of emergency;
 3. GTE shall comply with all laws, statutes, ordinances, rules, and regulations of the Federal, State and County of Hawai'i governments affecting the easement area;
 4. In the event any unanticipated burial sites, archaeological or historical artifacts such as shells, bones, or charcoal deposits, human burials, rock or coral alignments, pavings or walls are encountered, GTE and/or its contractor shall stop work and contact immediately, the State Historic Preservation Division in Honolulu at (808) 692-8015;
 5. GTE, its successors, permitted assigns, or permitted devisees, shall submit construction plans for approval by the Chairperson prior to the commencement of any work activity;
 6. GTE shall satisfy all terms and conditions imposed by HELCO, prior to consideration for joint pole shares and commencement to the installation of its fiber optic telecommunication system;
 7. Any new pole installations will require that an Archaeologist and Botanist survey the site before excavation;
 8. Reverter clause upon sooner termination or abandonment of specific purposes for which granted;
 9. Standard relocation clause;
 10. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

B. Grant an Immediate Construction Right-of-Entry to GTE, its contractors and/or persons acting for or on its behalf, subject to the following terms and conditions:

1. GTE, its contractors and/or persons acting for or on its behalf, shall indemnify, defend and hold the State of Hawai'i, Department of Land and Natural Resources, harmless from and against any loss, liability, claim or demand for property damage, personal injury, and death arising out of any act or omission of GTE, its contractors and/or persons acting for or on its behalf, under this approval or relating to or connected with the granting of this approval;
2. GTE, its contractors and/or persons acting for or on its behalf, shall procure, at their own expense, and maintain during the entire period of this construction right-of-entry, from an insurance company or companies licensed to do business in the State of Hawai'i, a policy or policies of comprehensive public liability insurance, in an amount acceptable to the Department (\$500,000 per incident/\$1,000,000 aggregate) insuring the State of Hawai'i against all claims for personal injury, death and property damage; that said policy shall, cover the entire right-of-entry area, ~~including all improvements and grounds and all roadways or sidewalks on or adjacent to the said right-of-entry area in the control or use of GTE, its contractor and/or persons acting for or on its behalf.~~ GTE, its contractor and/or persons acting for or on its behalf shall furnish the State with a Certificate showing the policy to be initially in force and shall furnish a like Certificate upon each renewal of the policy, each Certificate to contain or be accompanied by an assurance of the insurer to notify the State of any intention to cancel any policy sixty (60) calendar days prior to actual cancellation. The procuring of this policy shall not release or relieve GTE, its contractor and/or persons acting for or on its behalf of its responsibility under this construction right-of-entry as set forth herein or limit the amount of its liability under this construction right-of-entry;

GTE, its contractors and/or persons acting for or in its behalf shall not cause or permit the escape, disposal or release of any hazardous materials except as permitted by law. GTE, its contractors and/or persons acting for or in its behalf, shall not allow the storage or use of such materials in any manner not sanctioned by law or by the highest standards prevailing in the industry for the storage and use of such materials, nor allow to be brought onto the right-of-entry area any such materials except to use in the GTE-ordinary course of business of GTE, its contractors and/or persons acting for or on its behalf, and then only after written notice is given to the State of the identity of such materials and upon the State's consent which may be withheld at the State's sole and absolute discretion. If any lender or governmental agency shall ever require testing to ascertain whether or not there has been any release of hazardous materials by GTE, its contractors and/or persons acting for or on its behalf, then GTE, its contractors and/or persons acting for or on its behalf shall be responsible for the reasonable cost thereof. In addition, GTE, its contractors and/or persons acting for or on its behalf, shall execute affidavits, representations and the like from time to time at the State's request concerning the best knowledge and belief of GTE, its contractors and/or persons acting for or on its behalf, regarding the presence of hazardous materials on the

right-of-entry area placed or released by GTE, its contractors and/or persons acting for or on its behalf.

GTE, its contractors and/or persons acting for or on its behalf, agree to indemnify, defend, and hold the State harmless, from any damages and claims resulting from the release of hazardous materials on the right-of-entry area occurring while GTE, its contractors and/or persons acting for or on its behalf is in possession, or elsewhere if caused by GTE, its contractors and/or persons acting for or on its behalf. These covenants shall survive the expiration or earlier termination of the construction right-of-entry.

For purposes of this right of entry, "hazardous material" shall mean any pollutant, toxic substance, hazardous waste, hazardous material, hazardous substance, or oil as defined in or pursuant to the Resource Conservation and Recovery Act, as amended, the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, the Federal Clean Water Act, or any ordinance, rule, or by-law, whether existing as of the date hereof, previously enforced, or subsequently enacted;

3. GTE, its contractors and/or persons acting for or on its behalf, shall comply with all applicable laws of the Federal, State and County governments relative to the rights granted herein;
4. This right-of-entry is effective upon Land Board approval and shall continue in effect until the grant of easement document is issued;
5. All costs associated with the construction within the right-of-entry area shall be the sole responsibility of GTE, its contractors and/or persons acting for or on its behalf;
6. GTE, its successors, permitted assigns or permitted devisees, shall maintain and repair structures and improvements constructed and/or erected thereon at no cost to the State of Hawai'i or the County of Hawai'i, including periods of emergency;
7. Should it become necessary to replace existing poles or install new intermediary poles, GTE shall coordinate with HELCO to have the proposed sites inspected by an archaeologist and/or botanist (if necessary), before starting any excavation work. A follow up written report will be forwarded to the Hawai'i District Land Office and the Division of Historic Preservation;
8. GTE to install the overhead fiber optic cables at least thirty (30) feet over the existing access road to the County of Hawai'i, Pu'uana'hulu Municipal Solid Waste Landfill;
9. GTE, its contractor and/or persons acting for or on its behalf, shall obtain a DOFAW approved Fire Contingency Plan before start of construction in the area;
10. In the event any unanticipated sites or remains such as bone or charcoal deposits, human burials, rock or coral alignments, pavings or walls are encountered, GTE

shall stop work and contact the State Historic Preservation Division at (808) 692-8015, immediately;

11. Only tree trimming as is necessary shall be permitted;
12. Removal of construction debris, litter, rubbish and tree trimmings to an approved disposal site; and
13. Such other terms and conditions as may be prescribed by the serve the interests of the State.

Respectfully Submitted,


Wesley T. Matsunaga
Land Agent

APPROVED FOR SUBMITTAL:


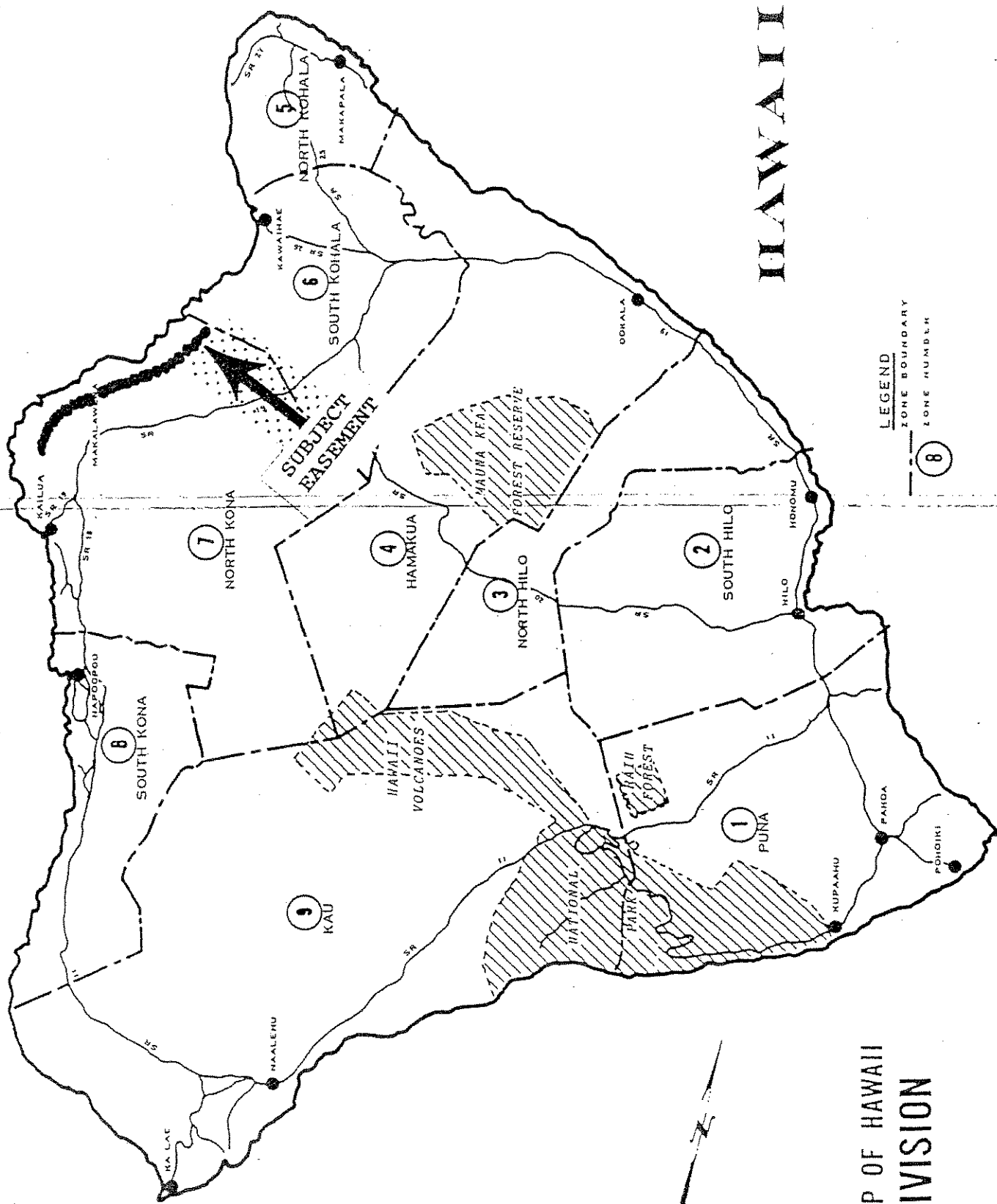

TIMOTHY E. JOHNS, Chairperson

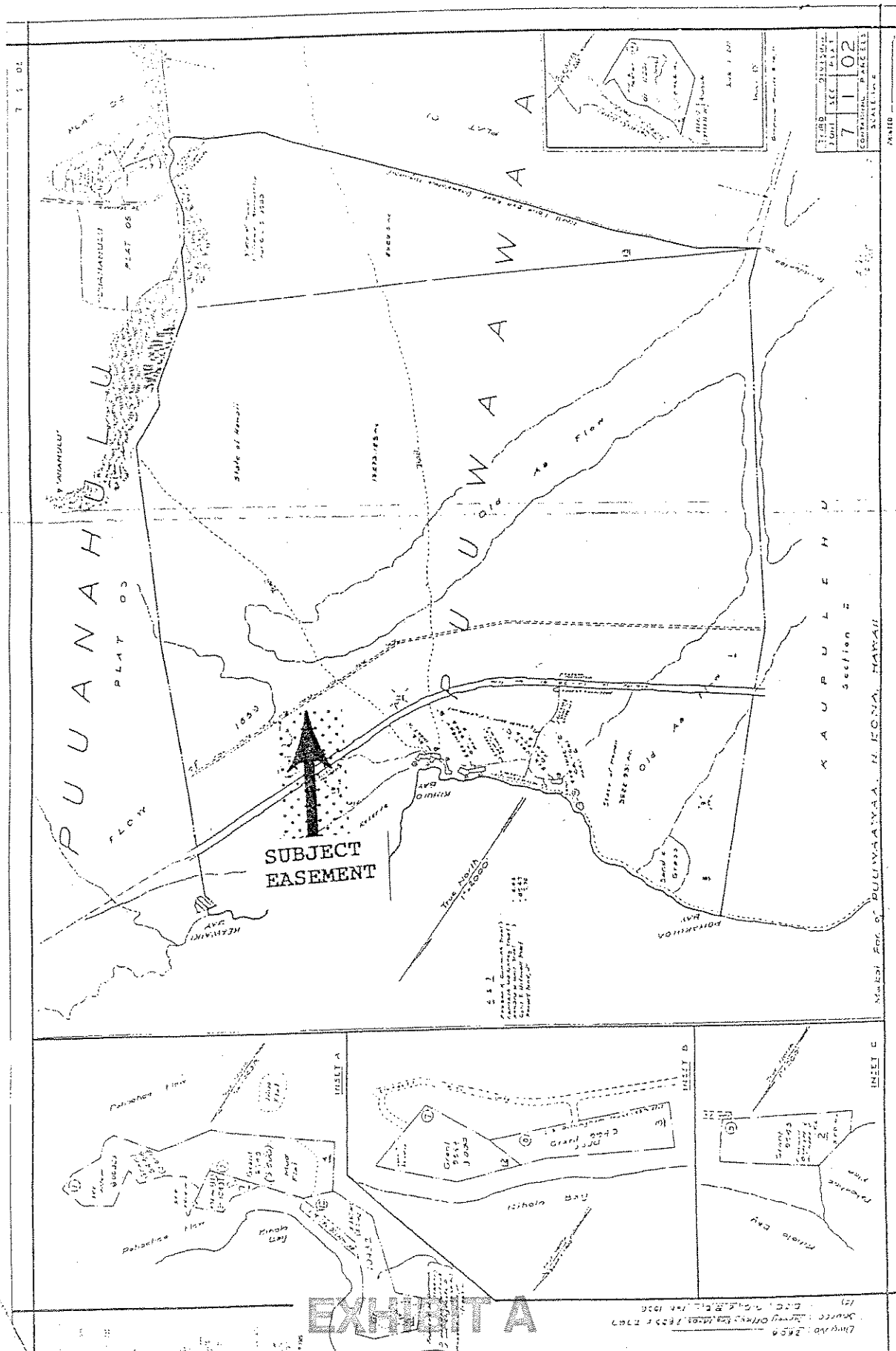
EXHIBIT A

EXHIBIT A

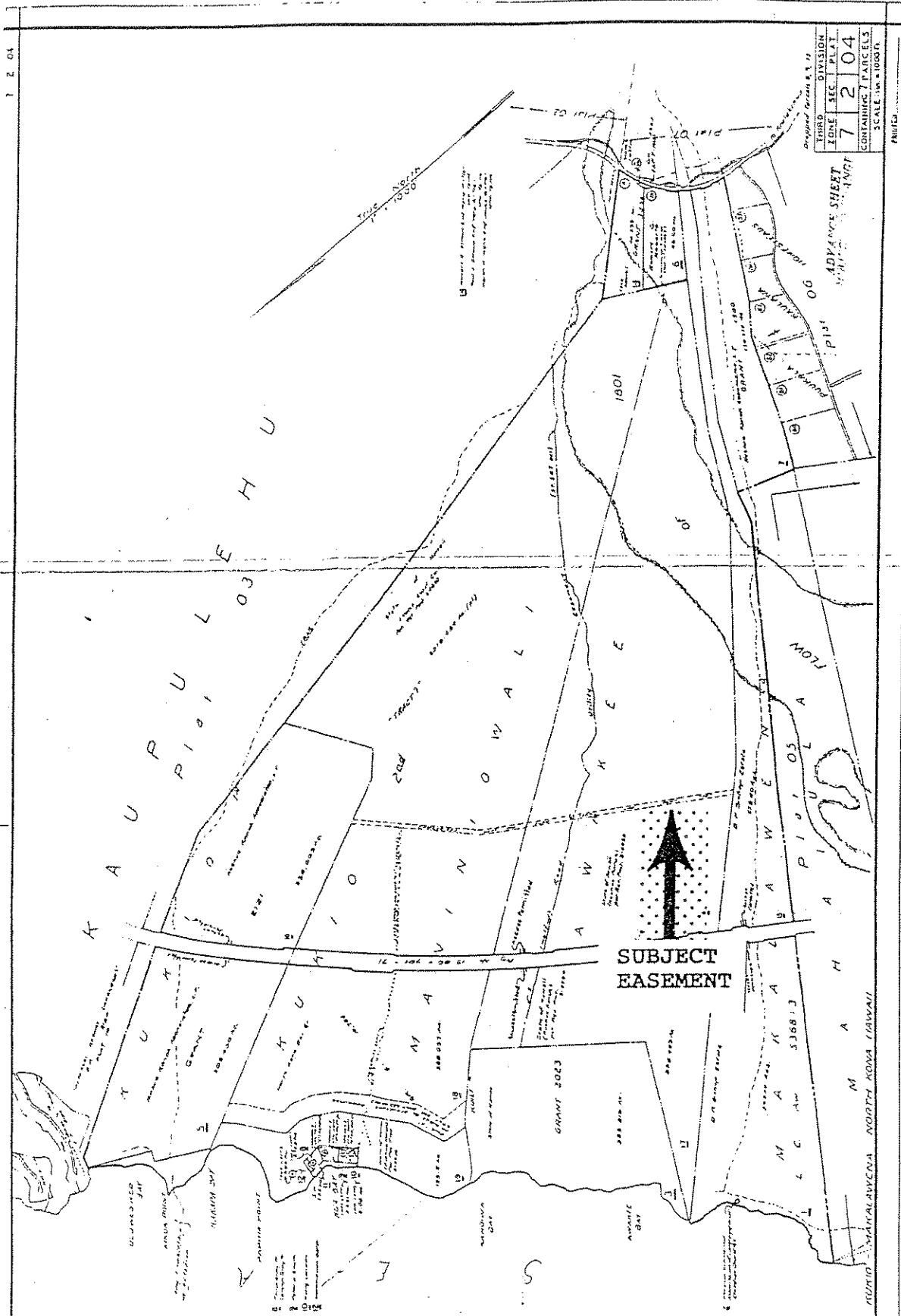
INDEX MAP OF HAWAII
3rd DIVISION



HAWAII



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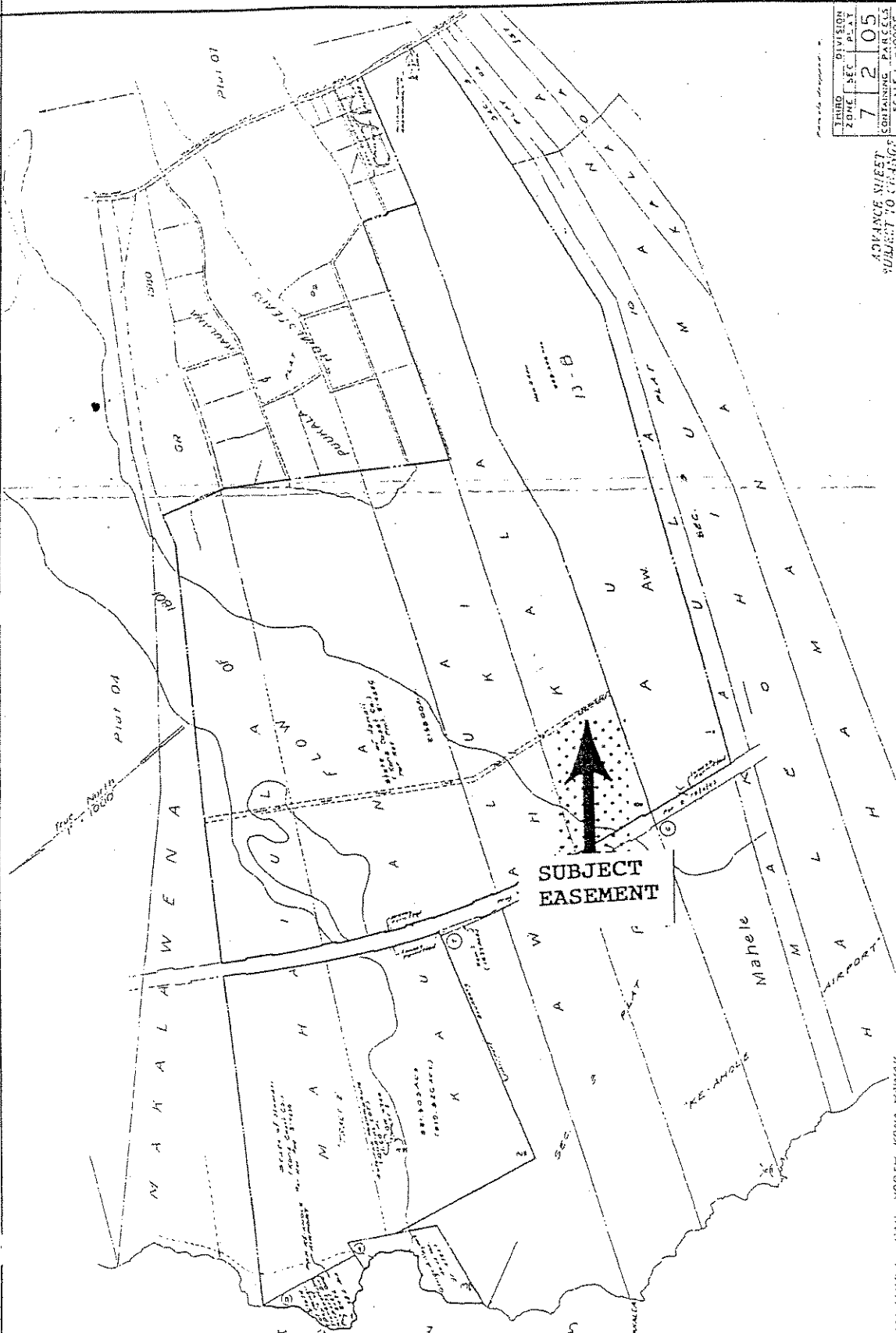


TRIM	SECTION	DIVISION
7	2	04
ADVANCE SHEET		
CONTAINING 7 PARCELS		
SCALE 1/4" = 1000 FT.		

**SUBJECT
EASEMENT**

Dwg No. 2115
Source: L.A. Hines Bldg. Survey Data
By: L.N. & G.Y.C. Survey, 1930

1



THIRD	DIVISION
ZONE	PLAY
7	205
CONTAINING PARCELS	
SCALE: 1 in. = 1000 ft.	

ADVANCE

PRINTED

1 3 10

SUBJECT
EASEMENT

KE AHOLE AIRPORT

THIRD	SECTION
1	310
CONTAINING PARCELS	
SCALE 1 IN = 100 FT	

387

MAKALALA - OOWA - 14, NORTH KONA, HAWAII

EXHIBIT A

EXHIBIT A